

HOGE FENTON JONES & APPEL
Alison P. Buchanan (SBN 215710)
Christen E. Bourne (SBN 312744)
60 South Market Street, Suite 1400
San Jose, CA 95113-2396
Telephone: (408) 287-9501
Facsimile: (408) 287-2583
Email: alison.buchanan@hogefenton.com
christen.bourne@hogefenton.com

Attorneys for Defendant
CLOUDABILITY, INC.

Daniel Remer (SBN 83702)
33 Los Pinos
Nicasio, CA 94946
Telephone: (415) 235-3202
Facsimile: (415) 276-9857
Email: dan@danielremer.com

Attorney for Plaintiff
EDWARD MILLER

DAVIS WRIGHT TREMAINE LLP
Martin L. Fineman (SBN 104413)
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
Email: martinfineman@dwt.com

Attorneys for Defendants
APPTIO, INC. and CLOUDABILITY, INC.

Howard Smukler (SBN 135957)
532 S. Coronado Street #304
Los Angeles, CA 90057
Telephone: (855) 900-3440
Email: hsmukler@gmail.com

Attorney for Plaintiff
EDWARD MILLER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

EDWARD MILLER,

Plaintiff,

v.

APPTIO, INC. and CLOUDABILITY, INC.,
et al.,

Defendants.

Case No. 4:19-cv-07762-HSG

JOINT DISCOVERY PLAN

Date: March 5, 2020
Time: 2:00 p.m.
Courtroom: 2
Judge: Hon. Haywood S. Gilliam, Jr.

Action Filed: November 25, 2019

Pursuant to Federal Rules of Civil Procedure 26(f) and the Court's Order Setting Initial Case Management Conference, Plaintiff EDWARD MILLER ("Plaintiff") and Defendants APPTIO, INC. and CLOUDABILITY, INC. (collectively, "Defendants") respectfully submit the following joint proposed discovery plan.

1 The parties have prepared this Joint Discovery Plan without waiver of, or limitation to, any
 2 objections each may have or may in the future raise with respect to the disclosures or to this
 3 litigation, including, but not limited to: (1) relevance; (2) any privilege or immunity doctrine
 4 (including, but not limited to, attorney-client and work product); (3) undue burden; (4)
 5 confidentiality; or (5) proprietary or commercially sensitive information. The parties reserve the
 6 right to amend, modify, revise, and/or clarify any portion of this Joint Discovery Plan pursuant to
 7 stipulation.

8 **I. CHANGES TO THE TIMING, FORM, OR REQUIREMENT FOR DISCLOSURES**
 9 **UNDER RULE 26(a) (FRCP 26(f)(3)(A))**

10 The parties have agreed to exchange Initial Disclosures on February 27, 2020, a week in
 11 advance of the initial case management conference. All other deadlines set by FRCP 26(a) shall
 12 remain unaltered. However, the parties reserve the right to amend any other deadline set by FRCP
 13 26(a) by stipulation.

14 **II. THE SUBJECT AND TIMING OF DISCOVERY (FRCP 26(f)(3)(B))**

15 The parties believe that formal discovery is premature pending the outcome of Defendants'
 16 Motion to Dismiss Plaintiff's First Amended Complaint. The parties have agreed to exchange
 17 certain targeted information in connection with settlement discussions.

18 **III. ISSUES REGARDING DISCLOSURES OR ELECTRONICALLY STORED**
 19 **INFORMATION (FRCP 26(f)(3)(C))**

20 Presently, the parties see no issues regarding disclosure, discovery, or preservation of
 21 electronically stored information. The parties intend to address any such issues by stipulation
 22 and/or Court intervention. The parties reserve the right to raise objections to discovery once it has
 23 been propounded.

24 **IV. ISSUES ABOUT CLAIMS OF PRIVILEGE OR THE PROTECTION OF TRIAL-**
 25 **PREPARATION MATERIALS (FRCP 26(f)(3)(D))**

26 Presently, the parties see no issues with claims of privilege or the protection of trial
 27 preparation materials and intend to address any such issues by stipulation and/or Court
 28

1 intervention through the appropriate motions for protective orders. The parties reserve the right to
2 raise objections to discovery once it has been propounded.

3 **V. CHANGES TO DISCOVERY LIMITATIONS (FRCP 26(f)(3)(E))**

4 Presently, the parties see no issues with altering discovery limitations but reserve all right
5 to modify them by stipulation.

6 **VI. RECOMMENDATIONS FOR PRE-TRIAL CONFERENCE OR PROTECTIVE
7 ORDERS (FRCP 28(f)(3)(F))**

8 Presently, the parties see no need for the Court to issue any orders under Rule 26(c) or
9 under Rule 16(b) and/or (c). If a formal protective order becomes necessary, the parties agree to
10 adopt the Model Protective Order for the Northern District Court of California.

11 Dated: February 27, 2020

Respectfully Submitted,

12
13 By: /s/
14 Daniel Remer

15 Attorney for Plaintiff
16 Edward Miller

17 HOGE, FENTON, JONES & APPEL, INC.

18
19 By: /s/
20 Alison P. Buchanan
21 Christen E. Bourne

22 Attorneys for Defendant
23 Cloudability, Inc.

24 DAVIS WRIGHT TREMAINE LLP

25 By: /s/
26 Martin L. Fineman

27 Attorneys for Defendants
28 Apptio, Inc. and Cloudability, Inc.

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that I obtained concurrence in the filing of this document from the other signatories.

Dated: February 27, 2020

HOGUE, FENTON, JONES & APPEL, INC.

By: ____/s/_____
Alison P. Buchanan
Christen E. Bourne

Attorneys for Defendant
Cloudability, Inc.